

Read 1) Application dt.25.02.2011 from M/s. The Kohinoor Tarpaulin Industries.
2) Determination Order No.DDQ-10-2005/Adm-3/106 Mumbai, dt.24.1.2011 passed in the case of the applicant.
Heard - Shri P.V. Surte, Advocate attended the hearing on behalf of the applicant.

PROCEEDINGS

(u/s. 56 (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11/2011/Adm-3/9/B- 2.

Mumbai, Date: 2/05/2014

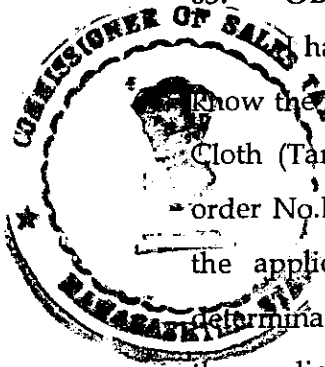
An application is received from M/s. The Kohinoor Tarpaulin Industries, holder of TIN 27630140979V, having address as 10/11, Y.P. Powar Nagar, Kolhapur-416012, requesting prospective effect to the Determination Order No.DDQ-10-2005/Adm-3/106 Mumbai, dt.24.1.2011 passed in the case of the applicant.

02. The subject of the application states that it is an application for prospective effect under section 56(2) of the MVAT Act,2002. It is informed that an appeal to the Hon. Maharashtra Sales Tax Tribunal has been filed against the aforementioned determination order in their case. The applicant states that if it is not agreed to stay the execution of the Determination Order then to make the same with prospective effect. The applicant has given a written submission dt.25.02.2014 stating the grounds on which he prays for grant of prospective effect to the order of dt.24.01.2011.

A hearing in the matter was held on dt.04.03.2014 when Sh. P.V. Surte (Advocate) attended and submitted that he had nothing to add in the matter as the written submission dt.25.02.2014 has covered all the aspects.

03. OBSERVATIONS

I have gone through the facts of the case. In response to the application seeking to know the rate of tax on "Cotton based Tarpaulin" commonly known 'Water Proof Canvas Cloth (Tarpaulin)' evidenced through sale Invoice No.111, dt.30.6.005, a determination order No.DDQ-10-2005/Adm-3/106 Mumbai, dt.24.1.2011 has been passed in the case of the applicant. Now, the applicant seeks prospective effect to the aforementioned determination order. In this regard, I have to say that the determination order in the case of the applicant was passed under sub-section (1) of section 56 of the Maharashtra Value Added Tax Act,2002 (MVAT Act,2002). The Commissioner's powers of granting prospective effect to an order are contained in sub-section (2) of the said section 56. While exercising his powers under sub-section (1), a determination order is passed in the case of an applicant. It is while passing of the determination order that there are deliberations on the issue of prospective effect. The powers under sub-section (2) are not exercised in isolation. A request for prospective effect has to be made alongwith the application for



determination or during a hearing before the Commissioner in the matter but not in any case after the decision on the determination application in terms of passing of the determination order. On this very issue, I have passed an order No.DDQ-11/2011/Adm-3/27/B-7 Mumbai, dt.10.07.2013 in the case of M/s.Bharat Milling Industries. In this order, I have dealt with the present issue at length and elaborate deliberations have been held to elucidate the provision pertaining to Determination of Disputed Questions as set out in section 56 of the MVAT Act,2002 and rule 64 of the Maharashtra Value Added Tax Rules,2005. Since the issue has been elaborately discussed in the order in the case of M/s.Bharat Milling Industries (cited supra), I would refrain from revisiting the same issue again in the present proceedings. The position of law stands thus - *after conclusion of determination proceedings under sub-section (1) of section 56, a separate application for grant of prospective effect to obtain an order for prospective effect under sub-section (2) of the same section is not maintainable.*

In the present case, the applicant has placed a request for prospective effect after passing of the determination order in his case. In view thereof, I am constrained to hold the present application as non-maintainable.

The situation being so, I have not dealt with any of the arguments as regards the merits of the case for considering the request for prospective effect.

03. In view of the above, it is ordered thus -

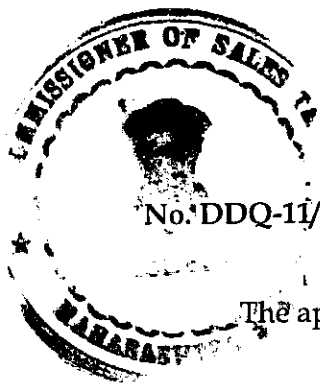
ORDER

(u/s. 56 (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11/2011/Adm-3/9/B- 2

Mumbai, Date: 2/05/2014

The application for grant of prospective effect is rejected, being non maintainable.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI